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 14 GIVENCHY, S.A.

FILED  
 2010 NOV -4 PM 3:13  
 CLERK U.S. DISTRICT COURT  
 CENTRAL DIST. OF CALIF.  
 LOS ANGELES

15 UNITED STATES DISTRICT COURT  
 16 CENTRAL DISTRICT OF CALIFORNIA  
 17 WESTERN DIVISION

18 GIVENCHY S.A., a *société anonyme*  
 19 duly organized and existing under the  
 20 laws of France,

21 Plaintiff,

22 v.

23 BCBG MAX AZRIA GROUP, INC., a  
 24 California corporation,

25 Defendant.

Case No.: **CV 10 8394** -GMK  
 (JX/K)

**COMPLAINT FOR:**

1. **FEDERAL TRADE DRESS INFRINGEMENT AND FALSE DESIGNATION OF ORIGIN (15 U.S.C. §1125(a))**
2. **STATE STATUTORY AND COMMON LAW UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§ 17200 et seq.); and**
3. **CONSTRUCTIVE TRUST**

1 Plaintiff, Givenchy S.A., through its attorneys, complaining of Defendant,  
2 BCBG Max Azria Group, Inc., alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§  
5 1116(a) and 1121; 28 U.S.C. §§ 1331, 1332(a), and 1338(a) and (b); and 28 U.S.C. §  
6 1367. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391 (b) and (c).

7 **NATURE OF THE ACTION**

8 2. This is an exceptional case of trade dress infringement and unfair  
9 competition arising out of Defendant's intentional copying of the distinctive non-  
10 functional elements of Plaintiff's well-known trade dress embodied in its popular  
11 Nightingale handbag. As a result of Defendant's importing, advertising, marketing,  
12 promoting, offering for sale, distributing and selling of Defendant's knock-off  
13 "Rembrandt" and other handbags into this judicial district, Plaintiff is entitled to its  
14 damages, Defendant's profits, an injunction, and Plaintiff's attorneys' fees and costs  
15 incurred in this suit.

16 **THE PARTIES**

17 3. Plaintiff, Givenchy S.A. ("Givenchy"), is a *société anonyme* duly  
18 organized and existing under the laws of France, having an office and principal place  
19 of business in Paris, France.

20 4. Plaintiff is informed and believes and thereupon alleges that at all times  
21 relevant hereto defendant, BCBG Max Azria Group, Inc. ("BCBG"), is an active  
22 California corporation with a local headquarters located at 2761 Fruitland Avenue,  
23 Vernon, California 90058, an online place of business at <http://www.bcbg.com>, and is  
24 and has been doing business in this judicial district and the State of California and is  
25 and has imported, advertised, marketed, promoted, offered for sale, distributed and  
26 sold handbags wrongfully bearing infringements of Givenchy's Nightingale Trade  
27 Dress in this judicial district and the State of California.

28

1 **FACTUAL ALLEGATIONS**

2 **Givenchy's History, Rights and Products**

3 5. Having worked as a stylist with some of the most influential couturiers of  
4 his time, Hubert De Givenchy opened his own couture house in 1952. Today,  
5 Givenchy is an international luxury brand, known worldwide for its haute couture,  
6 ready-to-wear collections for men and women, fashion accessories, fragrance, skin  
7 care, and jewelry.

8 6. Among other things, Givenchy is engaged in the manufacture, sale and  
9 distribution in interstate commerce of prestigious luxury merchandise, including  
10 handbags and related fashion accessory items.

11 7. In particular, with respect to this action, Givenchy is the creator and  
12 exclusive owner of the Nightingale handbag, launched in 2006.

13 8. The design and ornamentation of the Nightingale handbag including  
14 without limitation the total image and overall appearance reflected in such features as  
15 the size, shape, color or color combinations, product design, texture, and selection and  
16 arrangement of materials and accessories, as further set forth in Paragraph 31 hereof,  
17 are distinctive and non-functional (these features are collectively referred to herein as  
18 the "Givenchy Nightingale Trade Dress"). True and correct copies of photographs of  
19 authentic Givenchy Nightingale handbags bearing the Givenchy Nightingale Trade  
20 Dress are attached hereto as **Exhibit 1**.

21 9. Givenchy and its distributors have earned in excess of fifty (50) million  
22 dollars in revenue from their sale of authentic Givenchy Nightingale handbags bearing  
23 the Givenchy Nightingale Trade Dress and have extensively advertised and marketed  
24 such products worldwide.

25 10. The Givenchy Nightingale Trade Dress, and the goodwill of Plaintiff's  
26 business in connection thereto, are in full force and effect and have never been  
27 abandoned.

28

1           11. Givenchy's Nightingale handbags bearing the Givenchy Nightingale  
2 Trade Dress, by reason of their style, distinctive designs and craftsmanship have come  
3 to be known by the purchasing public throughout the United States as being of the  
4 highest quality. As a result thereof, the Givenchy Nightingale Trade Dress, and the  
5 goodwill associated therewith, are of inestimable value to Plaintiff.

6           12. Through Givenchy's efforts, Givenchy succeeded in producing a product  
7 that placed its distinctive handbags among the trendiest and most sought-after  
8 handbags in the United States market, owned by celebrities such as Heidi Klum,  
9 Rhianna, Nicole Richie and Ashley Tisdale, among others.

10           13. The major media coverage that Givenchy's Nightingale handbags have  
11 received, and continue to receive, has firmly established the Givenchy Nightingale  
12 Trade Dress as a unique indicator of Plaintiff as the source of origin of its distinctive  
13 Nightingale handbags.

14           14. For example, Givenchy's Nightingale handbags have been reviewed or  
15 featured in such high-profile magazines as Vogue, Allure, Harper's Bazaar, Marie  
16 Claire, Elle and W. In addition, Givenchy's Nightingale handbags have been featured  
17 in such popular publications as US Weekly, OK!, and In Touch, to name a few.

18           15. Based on the extensive sales of Plaintiff's handbags and their wide  
19 popularity, the Givenchy Nightingale Trade Dress has developed a secondary meaning  
20 and significance in the minds of the purchasing public, and Givenchy's Nightingale  
21 handbags bearing such trade dress are immediately identified by the public  
22 exclusively with Plaintiff.

23           16. As the owner of Givenchy's Nightingale Trade Dress, Givenchy has the  
24 exclusive right to use said trade dress in commerce.

25           17. Plaintiff's Givenchy Nightingale Trade Dress is vital to Plaintiff and  
26 Plaintiff will suffer irreparable harm if any third parties, including Defendant herein,  
27 are allowed to manufacture and sell infringing handbags bearing trade dress that  
28 unlawfully copies and imitates Plaintiff's Givenchy Nightingale Trade Dress.

1 **Defendant's Infringing Activities**

2 18. After Givenchy's adoption and use of its Nightingale Trade Dress on its  
3 handbags in 2006, on information and belief, Defendant, in or about 2009, began  
4 importing, promoting, marketing, advertising, displaying, offering for sale,  
5 distributing and selling its knock-off "Rembrandt" and other handbags that  
6 deliberately copy, line-by-line and stitch-by-stitch distinctive, non-functional elements  
7 of Givenchy's Nightingale Trade Dress ("Infringing Handbags"). Copies of  
8 photographs of exemplars of Defendant's Infringing Handbags are attached hereto as  
9 **Exhibit 2.**

10 19. Givenchy has never authorized or consented in any way to the use by  
11 Defendant of Givenchy's Nightingale Trade Dress, or given Defendant permission to  
12 make copies or imitations thereof.

13 20. The use by Defendant of Givenchy's Nightingale Trade Dress and copies  
14 or infringements thereof on Defendant's Infringing Handbags is likely to cause  
15 consumers, the public and the trade to erroneously believe that the handbags  
16 Defendant has imported, promoted, marketed, advertised, displayed, offered for sale,  
17 distributed and sold are authorized, sponsored, and/or approved by Givenchy when, in  
18 fact, they are not.

19 21. Defendant has acted with reckless disregard for Givenchy's rights in  
20 connection with its unlawful activities. Alternatively, Defendant intentionally engaged  
21 in illegal copying of Givenchy's popular handbags with the specific intent to profit  
22 therefrom. As a result, this case is an exceptional case under 15 U.S.C. § 1117(a).

23 22. By using infringements of Givenchy's Nightingale Trade Dress,  
24 Defendant has traded on the goodwill and reputation of Givenchy and has created the  
25 false impression that its handbags are Givenchy's legitimate products.

26 23. Among other things, the distribution, sale, offers of sale, display,  
27 promotion, marketing and advertisement of handbags bearing infringements of  
28 Givenchy's Nightingale Trade Dress has and will reflect adversely on Givenchy as the



1 believed source of origin thereof; hamper continuing efforts by Givenchy to protect its  
2 outstanding reputation for high quality, originality and distinctive handbags; and  
3 tarnish the goodwill and demand for genuine Givenchy handbags.

4 24. By committing the aforesaid acts, Defendant has: a) traded upon  
5 Givenchy's ingenuity, goodwill and reputation by creating a false association between  
6 Givenchy and its authentic products bearing the Nightingale Trade Dress and  
7 Defendant and Defendant's Infringing Handbags; b) disparaged Givenchy, its  
8 Nightingale Trade Dress and its products by creating a false association between  
9 Givenchy and its authentic products bearing the Nightingale Trade Dress and  
10 Defendant and Defendant's Infringing Handbags; and c) misappropriated Givenchy's  
11 advertising ideas and style of doing business with regard to the advertisement,  
12 promotion, marketing and sale of Givenchy's genuine products.

13 25. Defendant's Infringing Handbags are likely to cause, and have caused,  
14 confusion, deception and mistake by consumers, the public and the trade. This  
15 confusion causes irreparable harm to Givenchy and dilutes the distinctive quality of  
16 Givenchy's Nightingale Trade Dress and reduces the demand for authentic Givenchy  
17 Nightingale handbags. Accordingly, Defendant must be restrained and enjoined from  
18 any further infringement of Givenchy's Nightingale Trade Dress.

19 26. The injuries and damages sustained by Givenchy have been directly and  
20 proximately caused by Defendant's wrongful conduct as set forth herein.

21 27. Defendant has been unjustly enriched by illegally using and  
22 misappropriating Givenchy's intellectual property for its own financial gain.

23 28. Givenchy has no adequate remedy at law.

24 29. Givenchy has suffered harm and damages as a result of the acts of  
25 Defendant in an amount to be determined at trial.

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27 \\\

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**FIRST CLAIM FOR RELIEF**

**(Federal Trade Dress Infringement and False Designation of Origin)**

**[15 U.S.C. §1125(a)]**

30. Plaintiff incorporates all prior allegations as if set forth fully herein.

31. Givenchy's Nightingale Trade Dress has a unique, distinctive, non-functional style and unique, distinctive, non-functional characteristics. The Nightingale Trade Dress includes without limitation a removable strap, two double seamed handles, a flat bottom and decorative double stitched horizontal and vertical stripes on the exterior that visually separate the bag into four distinct quadrants. **(Exhibit 1.)**

32. Givenchy's Nightingale Trade Dress is known for, and recognized by, relevant consumers and the trade for the specific details identified hereinabove, as well as the overall look and feel contributing to the total image of Givenchy's Nightingale handbags that use and incorporate the Nightingale Trade Dress.

33. The characteristics, alone or in combination, of Givenchy's Nightingale Trade Dress have come to identify Plaintiff as their source of origin, thus serving as protectable trade dress.

34. The Nightingale Trade Dress is unique, distinctive and non-functional. If any utility exists, it is not essential to the purpose, quality or source identifying attributes of Givenchy's Nightingale handbags.

35. The Nightingale Trade Dress used in connection with Givenchy's Nightingale handbags is inherently distinctive and has acquired distinction within the meaning of the Lanham Act.

36. Defendant's creation, production, offering for sale, sale, advertisement and distribution of Defendant's Infringing Handbags, which use trade dress that is confusingly similar to the Nightingale Trade Dress, has been and is without Plaintiff's permission or consent, and constitutes designation of a term, symbol, device, or combination thereof, that is false or misleading within the meaning of 15 U.S.C. § 1125.

1 37. Plaintiff has suffered harm as a result of Defendant's acts.

2 38. Defendant's conduct has been calculated specifically to trade off of the  
3 goodwill that Plaintiff has developed in its successful Nightingale handbags. By its  
4 aforesaid acts, particularly Defendant's imitation of the unique, distinctive and non-  
5 functional features of the Nightingale Trade Dress that Plaintiff uses in connection  
6 with its Nightingale handbags, which are sold and distributed in interstate commerce  
7 and in this judicial district, Defendant has infringed and is likely to continue to  
8 infringe on Plaintiff's substantial rights in and to the Nightingale Trade Dress. In so  
9 doing, Defendant has represented and designated falsely to the public generally, and to  
10 relevant consumers specifically, the source of origin of Givenchy's Nightingale Trade  
11 Dress in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

12 39. Defendant's Infringing Handbags constitute false descriptions and  
13 representations tending to falsely describe or represent Defendant and Defendant's  
14 Infringing Handbags as being authorized, sponsored, affiliated or associated with  
15 Plaintiff, when, in fact, they are not.

16 40. Defendant has used copies and colorable imitations of the Nightingale  
17 Trade Dress on Defendant's Infringing Handbags with the express intent to cause  
18 confusion and mistake, to deceive and mislead the purchasing public, to trade upon  
19 Plaintiff's reputation for producing goods of the highest quality, and to improperly  
20 appropriate to itself Plaintiff's valuable intellectual property rights.

21 41. Plaintiff has been damaged by, and Defendant has profited from,  
22 Defendant's wrongful conduct in an amount to be proven at trial.

23 42. For each act of infringement, Plaintiff is entitled to recover its actual  
24 damages as well as Defendant's profits from such infringement.

25 43. Plaintiff is entitled to recover its reasonable attorneys' fees and costs  
26 incurred in this action.

27 44. Monetary relief alone, however, is not adequate to address fully the  
28 irreparable injury that Defendant's wrongful acts have caused and will continue to



1 cause to Plaintiff if such acts are not enjoined by this Court. Plaintiff is, therefore,  
2 entitled to preliminary and permanent injunctive relief to stop Defendant's  
3 infringement of Givenchy's Nightingale Trade Dress.

4 **SECOND CLAIM FOR RELIEF**

5 **(State Statutory and Common Law Unfair Competition)**

6 **[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]**

7 45. Plaintiff incorporates all prior allegations as if set forth fully herein.

8 46. This claim arises under California Business and Professions Code  
9 sections 17200 *et seq.* and the common law of the State. This Court has jurisdiction  
10 over the subject matter of this claim pursuant to the provisions of 28 U.S.C. § 1338(b),  
11 this being a claim of unfair competition joined with a substantial and related claim  
12 under the Trademark Laws of the United States, and under 28 U.S.C. § 1367.

13 47. Plaintiff is the owner of all right, title, and interest in and to Givenchy's  
14 Nightingale Trade Dress.

15 48. Upon information and belief, Defendant has appropriated Givenchy's  
16 Nightingale Trade Dress with the intent of causing confusion, mistake, and deception  
17 as to the source of origin of its goods with the intent to palm off its goods as those of  
18 Plaintiff and to place others in the position to palm off their goods as those of  
19 Plaintiff.

20 49. The acts of Defendant as aforesaid violate the unfair competition laws of  
21 the State of California and, specifically, California Business and Professions Code  
22 sections 17200 *et seq.*

23 50. Plaintiff has no adequate remedy at law. The conduct of Defendant has  
24 caused and, if not enjoined, will continue to cause, Plaintiff irreparable harm and  
25 damage Givenchy's Nightingale Trade Dress, and Plaintiff's business, reputation, and  
26 goodwill.

27 ///

28 ///

**THIRD CLAIM FOR RELIEF**

**CONSTRUCTIVE TRUST**

**[Cal. Civ. Code § 2224]**

51. Plaintiff incorporates all prior allegations as if set forth fully herein.

52. This claim arises under California Civil Code section 2224 and the common law of the State of California. This Court has jurisdiction over the subject matter of this claim pursuant to the provisions of 28 U.S.C. § 1338(b), this being a claim of constructive trust joined with a substantial and related claim under the Trademark Laws of the United States, and under 28 U.S.C. § 1367.

53. Plaintiff states, upon information and belief and thereupon alleges, that Defendant owns and/or possesses tangible real and/or personal properties and assets including, but not limited to, bank, savings, and/or other financial accounts, consisting of and/or obtained by profit derived from Defendant’s unauthorized manufacture, distribution, and/or sale of infringing products.

54. Plaintiff is entitled to the profits Defendant has derived from the infringement of Plaintiff’s trade dress and acts of unfair competition as detailed above, pursuant to, *inter alia*, 15 U.S.C. §1117 et seq.

55. Plaintiff has no adequate remedy at law and has suffered irreparable harm and damage as a result of Defendant’s acts as aforementioned. Defendant holds those tangible real and/or personal properties and assets consisting of and/or obtained by profit derived from Defendant’s infringing activities as a constructive trustee for the benefit of Plaintiff, in an amount thus far not determined.

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27 \\\  
28 \\\

**PRAYER FOR RELIEF**

WHEREFORE, Givenchy prays for judgment as follows:

- I. That preliminary and permanent injunctions be issued enjoining Defendant and its agents, servants, employees and those persons in active concert or participation with them or under their direction or control (“Related Entities”), from:
  - A. importing, manufacturing, promoting, advertising, marketing, distributing, displaying, selling, or offering to sell goods bearing infringements of Givenchy’s Nightingale Trade Dress;
  - B. reproducing, copying, or infringing Givenchy’s Nightingale Trade Dress, including using Givenchy’s Nightingale Trade Dress, or any marks or designations confusingly similar thereto in connection with importing, manufacturing, promoting, advertising, distributing, displaying, selling, or offering to sell any unauthorized goods;
  - C. using any logo, symbol, device, trade name, trademark, or trade dress that may be calculated to falsely represent that Defendant’s goods are sponsored by, authorized by, endorsed by, or in any way associated with Givenchy;
  - D. falsely representing that Defendant or its Related Entities are connected with Givenchy, or sponsored by or associated with Givenchy, or engaging in any act that is likely to falsely cause consumers, the public and the trade to erroneously believe that Defendant and/or its Related Entities and/or their goods are in any way endorsed by, approved by, and/or associated with Givenchy;
  - E. using any reproduction, infringement, copy, or colorable imitation of Givenchy’s Nightingale Trade Dress in connection with manufacturing, importing, exporting, promoting, advertising, marketing, distributing, displaying, selling, or offering to sell any

1 unauthorized goods including without limitation items bearing a  
2 reproduction, infringement, copy, or colorable imitation of  
3 Givenchy's Nightingale Trade Dress;

4 F. disposing, destroying, altering, moving, removing, concealing,  
5 tampering with or in any manner secreting any business records of  
6 any kind, including invoices, correspondence, books of account,  
7 receipts or other documentation relating or referring in any manner  
8 to the manufacture, promotion, marketing, advertisement, receipt,  
9 acquisition, importation, exportation, distribution, purchase,  
10 display, sale or offer for sale of any goods bearing a reproduction,  
11 infringement, copy, or colorable imitation of Givenchy's  
12 Nightingale Trade Dress;

13 G. possessing, receiving, manufacturing, assembling, distributing,  
14 displaying, advertising, marketing, promoting, returning, selling,  
15 offering for sale or otherwise disposing of any products, labels,  
16 tags, signs, prints, packages, wrappers, receptacles, advertisements,  
17 or other items bearing a reproduction, infringement, copy, or  
18 colorable imitation of Givenchy's Nightingale Trade Dress, or  
19 disposing of any means of producing these items; and

20 H. instructing, aiding or abetting any other person or entity in  
21 engaging in any of the activities referred to in subparagraphs A  
22 through G above.

23 II. Directing that Defendant deliver up for destruction to Plaintiff all  
24 unauthorized goods and advertisements in its possession or under its control bearing  
25 Givenchy's Nightingale Trade Dress or any simulation, reproduction, copy or  
26 colorable imitation thereof, and all plates, molds, matrices and other means of  
27 production of same pursuant to 15 U.S.C. § 1118.  
28

1 III. Directing such other relief as the Court may deem appropriate to prevent  
2 the trade and public from deriving the erroneous impression that Defendant, or any  
3 products manufactured, sold or otherwise circulated or promoted by Defendant, are  
4 authorized by Plaintiff or are in any way related to Plaintiff or Plaintiff's products.

5 IV. Requiring Defendant to pay to Plaintiff such damages as Plaintiff has  
6 sustained as a consequence of Defendant's infringement and unfair competition with  
7 respect to Givenchy's Nightingale Trade Dress and to account for all gains, profits and  
8 advantages derived by Defendant from the sale of its Infringing Handbags and that the  
9 award to Plaintiff be trebled as provided for under 15 U.S.C. § 1117.

10 V. Ordering that Plaintiff recover the costs of this action together with its  
11 reasonable attorneys' and investigation fees and prejudgment interest in accordance  
12 with 15 U.S.C. § 1117.

13 VI. That Plaintiff be awarded punitive damages for Defendant's malicious  
14 acts of common law unfair competition.

15 VII. Directing that this Court retain jurisdiction of this action for the purpose  
16 of enabling Plaintiff to apply to the Court at any time for such further orders and  
17 interpretation or execution of any order entered in this action, for the modification of  
18 any such order, for the enforcement or compliance therewith and for the punishment  
19 of any violations thereof.

20 VIII. Awarding to Plaintiff such other and further relief as the Court may deem  
21 just and proper, together with the costs and disbursements that Plaintiff has incurred in  
22 connection with this action

23  
24  
25 Dated: November 4, 2010

KEATS MCFARLAND & WILSON, LLP

By: 

Anthony M. Keats, Esq.

Attorneys for Plaintiff,  
GIVENCHY S.A.



**Givenchy S.A. v. BCBG Max Azria Group, Inc.**  
**U.S. District Court, Central District of California**  
**Case No. CV 10-08394 GHK (SHx)**

**EXHIBIT 1**

**COMPLAINT**

**EXHIBIT 1**



EXHIBIT 1  
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EXHIBIT 1  
PAGE 15



EXHIBIT 1  
PAGE 16



**Givenchy S.A. v. BCBG Max Azria Group, Inc.**  
**U.S. District Court, Central District of California**  
**Case No. CV 10-08394 GHK (SHx)**

**EXHIBIT 2**

**COMPLAINT**

**EXHIBIT 2**



EXHIBIT 2  
PAGE 17



EXHIBIT 2  
PAGE 18



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge George King and the assigned discovery Magistrate Judge is Stephen J. Hillman.

The case number on all documents filed with the Court should read as follows:

**CV10- 8394 GHK (SHx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Case 2:10-cv-08394-GHX Document 1  
Anthony M. Keats (SBN 178394) keats@kmwlaw.com  
David K. Caplan (SBN 181174) dcaplan@kmwlaw.com  
Konrad K. Gatien (SBN 221770) kgatien@kmwlaw.com  
**KEATS, MCFARLAND & WILSON LLP**  
9720 Wilshire Boulevard, Penthouse Suite  
Beverly Hills, California 90212  
Telephone: (310) 248-3830  
Facsimile: (310) 860-0363

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

GIVENCHY S.A., a *société anonyme* duly organized  
and existing under the laws of France,

PLAINTIFF,

v.

BCBG MAX AZRIA GROUP, INC., a California  
corporation,

DEFENDANT.

CASE NUMBER

CV-

**CV 10 8394-GHX(SHX)**

**SUMMONS**

**TO:** THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorneys Anthony M. Keats, David K. Caplan and Konrad K. Gatien, whose address is:

**KEATS MCFARLAND & WILSON LLP**  
9720 Wilshire Boulevard, Penthouse Suite  
Beverly Hills, California 90212  
Telephone: (310) 248-3830  
Facsimile: (310) 860-0363

an answer to the  **complaint**  \_\_\_\_\_ **amended complaint**  **counterclaim**  **cross-claim** which is herewith served upon you within twenty-one (21) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

DATE: **4 NOV 2010**

Clerk, U. S. District Court

By \_\_\_\_\_

**MARILYN DAVIS**

Deputy Clerk

(Seal of the Court)



<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) Givenchy S.A., a société anonyme duly organized and existing under the laws of France	<b>DEFENDANTS</b> BCBG Max Azria Group, Inc., a California corporation
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Keats McFarland & Wilson LLP (SEE ATTACHMENT "A") 9720 Wilshire Boulevard, Penthouse Suite Beverly Hills, California 90212; Tel.: (310) 248-3830	Attorneys (If Known)

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. ORIGIN** (Place an X in one box only.)

1 Original Proceeding    
  2 Removed from State Court    
  3 Remanded from Appellate Court    
  4 Reinstated or Reopened    
  5 Transferred from another district (specify):    
  6 Multi-District Litigation    
  7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION under F.R.C.P. 23:**  Yes  No     **MONEY DEMANDED IN COMPLAINT: \$** \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 (15 USC § 1125(a)) Federal Trade Dress Infringement and False Designation of Origin

**VII. NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE / PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?  No  Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Givenchy S.A., Paris, France

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

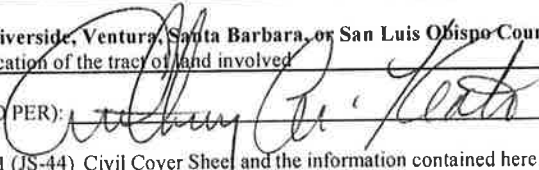
County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
BCBG Max Azria Group, Inc., Los Angeles County	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PROPER):  Date November 4, 2010

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**Civil Cover Sheet**  
**USDC, Central District of California**

**Givenchy S.A. v. BCBG Max Azria Group, Inc.**  
**Case No. \_\_\_\_\_**

**ATTACHMENT "A"**

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